IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Bail Appl..No. 7460 of 2007()

CRMP.2201/2007 of DISTRICT COURT, PATHANAMTHITTA

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PETITIONER : 1ST ACCUSED

GEETHA, AGED 26 YEARS,
W/O AJIKUMAR, KALLITTETHIL HOUSE,
V.KOTTAYAM MURI & VILLAGE,
KOZHENCHERRY TALUK.

BY ADV. SRI.P.HARIDAS

RESPONDENTS: STATE/COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7460 of 2007

Dated this the 5th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner is the 1st accused. Her husband is the 2nd accused. She was initially employed as a cashier and later given charge as manager in a finance establishment run by the defacto complainant. The crux of the allegations against the petitioner is that she had siphoned out funds of the establishment and appropriated it for her own use. As per the allegations in the F.I statement, an amount of about Rs.7 lakhs has been misappropriated by the petitioner. Properties have been acquired in the name of the husband of the petitioner using the ill gotten money, it is further alleged. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. She has a case that her salary was not paid to her promptly. She demanded her unpaid salary. She was indecently assaulted by the defacto complainant. To mask the real state of affairs, the present false complaint has been belatedly filed against her, submits the learned counsel for

the petitioner. It is, in these circumstances, prayed that the petitioner may be granted anticipatory bail.

3. The learned Public Prosecutor opposes the application. A counsel Sri.Sethunath has sought to appear and make submissions on behalf of the defacto complainant. The learned Public Prosecutor opposes the application. The counsel for the defacto complainant also supports the submissions made by the learned Public Prosecutor. A vakalat on behalf of the defacto complainant is being filed today, it is submitted.

4. The learned Public Prosecutor opposes the application. It is submitted that the available indications clearly reveal the contemporaneous and culpable role played by the petitioner. According to the learned Public Prosecutor, the modus adopted by the petitioner is that she used to part with higher amounts than the value and worth of the securities presented by her relatives. She even used to pay amounts to the customers less than the amount shown on the transaction concerned. The balance amount used to be appropriated by her. Investigation is in progress. The petitioner has to be arrested and interrogated. Her version has to be ascertained. The available indications clearly point to the culpability of the petitioner. There are

absolutely no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor .

5. The learned counsel for the petitioner finally submits that the petitioner is a woman. She is pregnant also. In these circumstances, leniency may be shown to the petitioner and she may be granted anticipatory bail, it is prayed.

6. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . I have been taken through the case diary. I am unable to perceive any features in this case which can justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The classic distinction between the jurisdiction under Section 437 Cr.P.C and Section 438 Cr.P.C has got to be born in mind. I am not persuaded to agree that there are any exceptional circumstances in this case that car persuade this Court to invoke such extraordinary equitable discretion. Though it is alleged that the petitioner was subjected to indecent assault and her salary was illegally withheld, there is not a semblance of material available now to indicate that possibility. No complaint to that effect has been filed. F.I statement does also show that the

petitioner had drawn only an amount of Rs.5,000/- as salary. That by itself cannot persuade me that there is illegal retention of her salary by the defacto complainant or that there was any dispute or subsequent illegal assault on that score. I am of opinion that it is for the petitioner to surrender before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail. The petitioner shall of course be entitled to urge in her application under Section 437 Cr.P.C about her physical disabilities and the fact that she is pregnant. Appropriate orders on merits must be passed by the learned Magistrate.

7. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-